FILED
JUL 25 1955
HAROLD B. WILLEY, Clerk

No. 263

IN THE

Supreme Court of the United States

October Term, 1954

State of Utah; John Archer; W. H. H. Cranmer; and J. R. Simplot Company, a corporation,

Petitioners,

vs.

Bradley Estates, Inc., a corporation; and Walter N. Stillman; Charles A. Rhealt; and Robert I. Hunneman, Trustees under the will of Robert S. Bradley, deceased,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

E. R. CALLISTER, JR.
Attorney General

PETER W. BILLINGS
Special Assistant Attorney General

State Capitol Building,
Salt Lake City, Utah

INDEX

OPINIONS BELOW 1
JURISDICTION 2
QUESTION PRESENTED 2
STATUTES INVOLVED 2
STATEMENT 2
REASONS FOR GRANTING THE WRIT 4
CONCLUSION 7
APPENDIX "A"—Statutes 8
"B"-Opinions and judgment below 14

CITATIONS

CASES:

Steel v. *St. Louis Smelting and Ref. Co.*, 106 U.S. 447 (1882) 7
U.S. v. *Sweet*, 245 U.S. 563 6
U.S. v. *Wyoming*, 331 U.S. 440 ..... 4, 6
Wright v. *Roseberry*, 121 U.S. 488 (1887) 7

STATUTES:

26 Stat. 215 6
26 Stat. 222 6
25 Stat. 636 6
Act of February 28, 1891, 26 Stat. 796, 43 U.S.C. 851 ..... Appendix A
Act of July 16, 1894, 28 Stat. 107 2
Act of May 3, 1902, 32 Stat. 189, 43 U.S.C. 853 ..... Appendix A
Act of January 25, 1927, 44 Stat. 1026, as amended May 2, 1932, 47 Stat. 140; April 22, 1954, 68 Stat. 57, 43 U.S.C. 870 7

IN THE

Supreme Court of the United States

October Term, 1954

No. .....

State of Utah; John Archer; W. H. H. Cranmer; and J. R. Simplot Company, a corporation,

Petitioners,

vs.

Bradley Estates, Inc., a corporation; and Walter N. Stillman; Charles A. Rhealt; and Robert I. Hunneman, Trustees under the will of Robert S. Bradley, deceased,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above entitled case on May 23, 1955.

Citation to Opinions Below

The opinion of the Court of Appeals for the Tenth Circuit printed in Appendix "B," hereto, infra, p. 14 is reported in 223 Fed. 2d Adv. Sheets, Issue No. 1.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on May 23, 1955 (R. 8). The jurisdiction of this court in invoked under 28 U.S. C. 1254 (1).

Question Presented

Whether the Utah Enabling Act (28 Stat. 107), by Sections 6 and 10 thereof, reserved from entry under the land laws of the United States, sections 2, 16, 32 and 36 of each township for the support of the public schools of that state — whether said sections were surveyed or unsurveyed — unless such lands were of known mineral character at the date of statehood.

Statutes Involved

The statutory provisions involved are Sections 6 and 10 of the Act of July 16, 1894, 28 Stat. 107; the Act of February 28, 1891, 26 Stat. 796, 43 U.S. C. 851; the Act of May 3, 1902, 32 Stat. 189, 43 U.S. C. 853; and the Act of January 25, 1927, 44 Stat. 1026, as amended May 2, 1932, 47 Stat. 140; April 22, 1954, 68 Stat. 57, 43 U.S. C. 870, all of which are printed in Appendix "A," infra, p. 9 et seq.

Statement

Respondents commenced this action to quiet title to certain patented lode mining claims valuable for phosphate located in Section 32, Township 12 North, Range 8 East, and Section 36, Township 11 North, Range 7 East, Salt Lake Meridian, situated in Rich County, State of Utah. As these two sections are among those granted to the State of Utah by the Enabling Act (28 Stat. 107) for the support of its public schools, this action was instituted by plaintiffs as successors in interest to the original patentees

against the State of Utah and its lessees. Jurisdiction of the United States District Court was based on the federal question involved in the interpretation of the Utah Enabling Act and other Acts of Congress relative to the school land grants.

The mining claims in question were located subsequent to the admission of Utah into the Union on January 6, 1896, and prior to the date the survey of the sections concerned were accepted and filed by the Surveyor General of the United States. The United States Surveyor noted on his Report of Survey made in the summer of 1896 that the lands in question were not of mineral character. In 1913, the General Land Office notified the State of Utah that the lands in question were not known to be valuable for minerals at the time the surveys were approved and filed in 1898, at which time, the full rights of the state presumptively attached.

However, between 1907 and 1915 patent proceedings were conducted by respondents' predecessors in the Land Office of the Department of the Interior in the course of which the State contended that the lands in question were granted absolutely to the State of Utah by the Utah Enabling Act. In each case, the Department of the Interior ruled the grant was not in effect until survey, that at the time of survey the lands were known to be valuable for minerals and hence, did not pass to the State of Utah. No finding of fact was made that the lands were known to be valuable for mineral at the time of statehood nor was the question of law now presented either raised by the parties or decided by the Department of Interior in the patent proceedings. Accordingly, patents were issued to respondents' predecessors. No appeal was taken by the State of Utah outside the Department of the Interior.

In the trial of the case below, it was the contention of the State of Utah and its lessees, relying on the express language of the section 10 of the Enabling Act, and the statements of this court in *United States* v. *Wyoming,* 331 U.S. 440, that while title to the school sections does not pass absolutely to the States until survey, Section 10 of the Enabling Act reserved such lands from entry prior to survey and that by reason thereof, respondents' mining locations during the restrictive period and the patents based thereon, were void.

Section 10 provides:

> "That the proceeds of lands herein granted for educational purposes, except as hereinafter otherwise provided, shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools, *and such land shall not be subject to pre-emption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only.*" (Emphasis supplied.)

It was and is the State's position that recognition of a mineral location on a school section made prior to survey is to read out of the statute the express language "whether surveyed or unsurveyed."

The contentions of the State as to its title were rejected by the trial court and title quieted against it. On appeal the decision of the lower court was affirmed by the Court of Appeals for the Tenth Circuit.

Reasons for Granting the Writ

1. While this case involves mining claims valuable for phosphate, the principle of law contended for by the State of Utah has far reaching aspects in the vast area of unsurveyed public land in the State of Utah in which

the recent large discoveries of uranium deposits have been made. There are presently 7,500,000 unsurveyed acres (outside of Indian reservations and National Parks) in the State of Utah, the greater portion of which are located on the western rim of the Colorado Plateau where the uranium mining and exploration activities essential to the development of atomic energy are at their height. A large number of claims are now being located under the mining laws of the United States on lands which would be encompassed within the four school sections in each township on survey. It is estimated that at the present rate of survey, it will be years before surveys are completed and filed. Under such circumstances Utah stands to lose substantial sums for the support of her schools to locations on unsurveyed school sections by private parties under the mining laws of the United States, if such locations are permitted without the protection of the State's inchoate rights in the school sections contemplated by Section 10 of the Enabling Act. The State of Utah needs the decision of this court on this question to protect its school lands from loss through adverse entry.

2. Similarly, from the standpoint of the party locating a mining claim on lands which by protraction can be shown will be within the boundaries of the school sections upon survey, a cloud exists on the title to such claims by reason of the express language of Section 10 of the Enabling Act reserving such sections from entry, whether surveyed or unsurveyed. Until the decision this case, no court had passed upon the effects of the restrictions in the Enabling Act as to school sections. It is an important Federal question as to the availability of unsurveyed public lands of the western states to mineral entry which should be finally determined by this court. The orderly development of the uranium mining industry, necessary to the

national defense and the development of atomic energy, will be promoted by a final determination as to the status of claims located on such school sections.

3. Similar language to that of Section 10 of the Utah Enabling Act is contained in the Enabling Acts for the State of Wyoming (26 Stat. 222), Idaho, (26 Stat. 215), South Dakota, North Dakota, Montana and Washington (25 Stat. 636). With respect to such language in the Wyoming Act, this court in the case of *United States* v. *Wyoming,* 331 U.S. 440, rejected the contention that such reservation was effective as against the United States, but said:

> "The phrase 'which shall be reserved for school purposes only' should not be considered apart from the language which immediately precedes it. The clause beginning with the semicolon in the last sentence in the section clearly and explicitly treats the claims of individuals to school lands asserted under the Federal land laws and provides that those claims should not prevail against the state. The phrase upon which Wyoming relies should be construed as an affirmation of the state's interest as opposed to the claims of such individuals. * * * "

The decision of the Tenth Circuit in the case at bar ignores the above quoted statement of this court upon which the State of Utah and her sister states, with comparable provisions in their grants of school section lands, justifiably rely. Due regard for the administration of the public lands located in these states as well as Utah, requires the authoritative construction by this court of the restrictions on location in school sections, whether such sections are surveyed or unsurveyed.

4. The opinion of the Circuit Court in the case at bar apparently relies on *U.S.* v. *Sweet,* 245 U.S. 563, which held that lands known to be valuable for minerals at statehood

do not pass to the state. The court thus ignores the proscription on entry on school land in unsurveyed townships by putting the cart (of when title passes) before the horse (of what lands are open for mineral entry). However, in 1927, Congress in effect repealed the *Sweet* case for Utah and statutes to similar effect for the other western states by the Act of January 25, 1927, 44 St. 1026, 43 U.S. 870. Thus, there is still posed for the State of Utah, the question of protecting its inchoate school sections by the language of Section 10, regardless of their mineral character. Therefore, the mineral character of the lands is not the test and this court should squarely resolve the conflicting public policies of promotion of public schools, as against the promotion of mineral exploration raised by the provisions of the Utah Enabling Act relied upon by the State in the case at bar.

5. In the opinion of the court below reliance was placed on the issuance of patents to respondents' predecessors. The issue to be resolved here was not ruled upon in the patent proceedings and, in any event, is a question solely of law, which can be raised any time to show the invalidity of a patent (*Wright* v. *Roseberry,* 121 U.S. 488 (1887), *Steel* v. *St. Louis Smelting and Ref. Co.,* 106 U.S. 447 (1882)). This case presents in a posture ripe for determination, the sole legal issue of the meaning of Section 10 of the Utah Enabling Act.

Conclusion

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

E. R. CALLISTER, JR.
Attorney General
PETER W. BILLINGS
Special Assistant Attorney General

Appendix "A"

Act of July 16, 1894
28 Stat. 107.

Sec. 6.

That upon the admission of said State into the Union, sections numbered two, sixteen, thirty-two, and thirty-six in every township of said proposed state, and where such sections, or any parts thereof have been sold or otherwise disposed of by or under the authority of any Act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided,* That the second, sixteenth, thirty-second and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this Act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this Act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

Sec. 10.

That the proceeds of lands herein granted for educational purposes, except as hereinafter otherwise provided, shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools, and such land shall not be subject to pre-emption,

homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only.

Act of February 28, 1891
26 Stat. 796, 43 U.S.C. 851

Where settlements with a view to preemption or homestead have been, prior to February 26, 1859, or shall thereafter be made, before the survey of the lands in the field, which are found to have been made on sections 16 or 36, those sections shall be subject to the claims of such settlers; and if such sections, or either of them, have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said State or Territory, in lieu of such as may be thus taken by preemption or homestead settlers. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections 16 or 36 are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: *Provided,* Where any State is entitled to said section 16 or 36, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory to compensate deficiencies for school purposes, where sections 16 or 36 are fractional in quantity, or where one or both are wanting by reason

of the township being fractional, or from any natural cause whatever. And it shall be the duty of the Secretary of the Interior, without awaiting the extension of the public surveys, to ascertain and determine, by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the State or Territory shall be entitled to select indemnity lands to the extent of two sections for each of said townships, in lieu of sections 16 and 36 therein; but such selections may not be made within the boundaries of said reservations: *Provided, however,* That nothing in this section contained shall prevent any State or Territory from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced to the public domain and then taking the sections 16 and 36 in place therein; but nothing in this proviso shall be construed as conferring any right not in this section existing prior to February 28, 1891.

Act of May 3, 1902
32 Stat. 189,
43 U.S.C. 853

All the provisions of sections 1 and 2, this chapter, which provide for the selection of lands for educational purposes in lieu of those appropriated for other purposes, are made applicable to the State of Utah, and the grant of school lands to said State, including section 2 and 32 in each township, and indemnity therefor, shall be administered and adjusted in accordance with the provisions of said sections, anything in the Act providing for the admission of said State into the Union, to the contrary notwithstanding.

Wherever the words "sections 16 and 36" occur in said sections, the same as applicable to the State of Utah shall read: "sections 2, 16, 32 and 36" and wherever the words "sixteenth and thirty-sixth sections" occur the same shall read: "second, sixteenth, thirty-second, and thirty-sixth sections," and wherever the words "sections 16 or 36" occur the same shall read: "sections 2, 16, 32, or 36," and wherever the words "two sections" occur the same shall read "four sections."

Act of January 25, 1927
44 Stat. 1026,

43 U.S.C. 870 as amended May 2, 1932, 47 Stat. 140; Apr. 22, 1954, 68 Stat. 57.

Subject to the provisions of subsections (a), (b), and (c) of this section, the several grants to the States of numbered sections in place for the support or in aid of common or public schools be, and they are hereby, extended to embrace numbered school sections mineral in character, unless land has been granted to and/or selected by and certified or approved, to any such State or States as indemnity or in lieu of any land so granted by numbered sections.

(a) The grant of numbered mineral sections under this section shall be of the same effect as prior grants for the numbered non-mineral sections, and titles to such numbered mineral sections shall vest in the States at the time and in the manner and be subject to all the rights of adverse parties recognized by existing law in the grants of numbered non-mineral sections.

(b) The additional grant made by this section is upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall hereafter

be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands not heretofore disposed of by the State shall be subject to lease by the State as the State legislature may direct, the proceeds and rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools: *Provided,* That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

(c) Except as provided in subsection (d) of this section, any lands included within the limits of existing reservations of or by the United States, or specifically reserved for water-power purposes, or included in any pending suit or proceeding in the courts of the United States, or subject to or included in any valid application, claim, or right initiated or held under any of the existing laws of the United States, unless or until such reservation, application, claim, or right is extinguished, relinquished or cancelled, and all lands in the Territory of Alaska, are excluded from the provisions of this section.

(d) (1) Notwithstanding subsection (c) of this section, the fact that there is outstanding on any numbered mineral section at the time of its survey a lease or leases entered into by the United States, or an application therefor, shall not prevent the grant of such numbered mineral section to the State concerned as provided in sections 870 and 871 of this title.

(2) Any numbered mineral section which has been surveyed prior to April 22, 1954, and which has not been granted to the State concerned solely by reason of the fact that there was outstanding on it at the time of the survey a lease or leases entered into by the United States, or an application therefor, is granted by the United States to such State under this section as if it had not been so leased; and the State shall succeed to the position of the United States as lessor under such lease or leases.

(3) Any numbered mineral section which is surveyed on or after April 22, 1954, and on which there is outstanding at the time of such survey a lease or leases entered into by the United States, shall (unless excluded from the provisions of this section by subsection (c) of this section for a reason other than the existence of an outstanding lease) be granted to the State concerned immediately upon completion of such survey; and the State shall succeed to the position of the United States as lessor under such lease or leases.

(4) The Secretary of the Interior shall, upon application by the State, issue patents to the State for the lands granted by sections 870 and 871 of this title, in accordance with section 871a of this title. Such patent shall include a statement that the State succeeded to the position of the United States as lessor at the time the title vested in the State.

(5) Where, at the time rents, royalties, and bonuses accrue, the lands or deposits covered by a single lease are owned in part by the State and in part by the United States, the rents, royalties, and bonuses shall be allocated between them in proportion to the acreage in said lease owned by each.

APPENDIX "B"

United States Court of Appeals

TENTH CIRCUIT

Nos. 5018, 5019—MAY TERM, 1955

State of Utah; John Archer; W. H. H. Cranmer; and J. R. Simplot Company, a corporation,

Appellants,

vs.

Bradley Estates, Inc., a corporation; and Walter N. Stillman; Charles A. Rhealt; and Robert I. Hunneman, Trustees under the will of Robert S. Bradley, deceased,

Appellees.

State of Utah; John Archer; and W. H. H. Cranmer,

Appellants,

vs.

Bradley Estates, Inc., a corporation; and Walter N. Stillman; Charles A. Rhealt; and Robert I. Hunneman, Trustees under the will of Robert S. Bradley, deceased,

Appellees.

Appeals from the United States District Court for the District of Utah.

H. R. Waldo, Jr., Assistant Attorney General of Utah, and Peter W. Billings, (E. R. Callister, Attorney General of Utah, and Robert L. Cranmer were with them on the brief) for Appellants.

S. N. Cornwall (Grant H. Bagley and Dennis McCarthy were with him on the brief) for Appellees.

Before BRATTON, HUXMAN and MURRAH, Circuit Judges.

BRATTON, Circuit Judge.

These were actions instituted by Bradley Estates, Inc., and Walter N. Stillman, Charles A. Rhealt, and Robert I.

Hunneman, trustees under the will of Robert S. Bradley, deceased, against the State of Utah, John Archer, W. H. H. Cranmer, and J. R. Simplot Company, to quiet title to certain lode mining claims valuable for phosphate, located in Rich County, Utah. Some of the claims were in section 32 and some in section 36, in designated townships and ranges, respectively. Plaintiffs asserted title under four mineral patents issued by the United States to Peter B. Bradley and Robert S. Bradley pursuant to the provisions of the Act of May 10, 1872, 17 Stat. 91. One of the patents was issued in 1908, and three were issued in 1915. By counterclaim, the defendants sought to quiet their title. They claimed under the grant contained in the Enabling Act of the State of Utah, approved July 16, 1894, 28 Stat. 107. Judgment was entered in each case quieting the title of plaintiffs. Aggrieved, the defendants appealed.

Section 6 of the Enabling Act of Utah, supra, grants to that state sections 2, 16, 32, and 36 in every township in the state for the support of common schools. By its further terms, the section grants and makes provision for the selection of other lands equivalent thereto where such sections or parts thereof have been sold or otherwise disposed of by or under the authority of an Act of Congress. And section 10 provides that the proceeds of lands therein granted for educational purposes shall constitute a permanent school fund, and that such lands shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only. Section 6 does not contain any express exception or reservation of mineral lands from the grant. But in the appropriate exertion of the judicial function of ascertaining and giving effect to the Congressional intent in respect to

including in or excluding from the grant mineral bearing lands, the Act must be viewed in the light of its content, in the light of the mining laws, in the light of the school land indemnity law, and in the light of the established public policy relating to mineral lands. And it is settled law that when read in that manner, the Act does not disclose a legislative purpose to include therein lands known to be mineral at the time the grant takes effect. United States v. Sweet, 245 U.S. 563.

It is urged on behalf of the appellants that under sections 6 and 10 of the Enabling Act, supra, the four specified sections in each township granted for the support of common schools were not open to mining or other location under the public land laws of the United States, unless such sections were known to be valuable for mineral purposes in 1896, when the State of Utah was admitted into the Union; that the lands in question were not known at that time to be valuable for such purposes; that when the official survey of such lands was completed and filed, the full and unencumbered title passed to the state; and that title having become vested in the state, the mineral patents were void. It is said in substance that upon its admission, the State was by the Enabling Act granted an interest in the specified sections in each township, even though unsurveyed, superior to the rights of individuals locating lode mining claims thereon prior to the approval of the official survey. And it is further said that to hold the state has no rights against individuals until a survey has been made, and that a mineral location made between the date of statehood and the date on which the survey is approved supersedes the rights of the state, is to ignore the plain language of section 10 of the Enabling Act. The granting language contained in section 6 is couched in

words of present grant. And section 10 concerns itself with the lands granted, whether surveyed or unsurveyed, and provides that they shall not be subject to preemption, homestead entry, or any other entry under the laws of the United States. But in considering similar grants for the support of common schools, it has been held without deviation that title to unsurveyed sections of public lands designated as school lands does not pass to the state upon its admission into the Union; that they remain subject to the disposition of Congress until the official survey thereof is approved by the Land Department; and that lands known to be valuable for minerals at the time of the approval of the survey do not pass to the state. Heydenfeldt v. Daney Gold and Silver Mining Co., 93 U.S. 634; Mining Co. v. Consolidated Mining Co., 102 U.S. 167; United States v. Morrison, 240 U.S. 192; West v. Standard Oil Co., 278 U.S. 200; United States v. Sweet, supra; United States v. Wyoming, 331 U.S. 440; State of Utah v. Work, 6 F. (2d) 675, affirmed, 273 U.S. 649. We fail to find in section 10, supra, any persuasive token of a Congressional purpose to take the four specified sections in each township in Utah out of that firmly imbedded principle, as that section of the Enabling Act has application only to non-mineral lands granted to the state for educational purposes. It does not have application to mineral lands.

At the time of the admission of the State of Utah into the Union, no official survey of the lands in controversy had been approved. The official township survey was approved at a later date. After the approval of the survey, applications were made to the Register and Receiver of the Land Office in Salt Lake City for the issuance of mineral patents covering the lode mining claims to which reference has been made. Inasmuch as the applications covered in part lands

in sections 32 and 36, notice of their filing was given to the State of Utah. The State appeared and filed written protests against the granting of the requested mineral patents on the ground that the lands situated in such sections were granted to the State for the support of its common schools, and that at the time they were so granted they were not known to be valuable for minerals. Hearings were had and appeals were taken. The State participated throughout. By final action taken within the Department of the Interior, it was found and determined that at and prior to the date of the approval of the final official survey the lands were known to be valuable for the minerals they contained. And, taking that determination into consideration, the mineral patents were issued. The Land Department—meaning the Register and Receiver of the local Land Office in Salt Lake City, the Commissioner of the General Land Office, and the Secretary of the Interior—was clothed with power and authority to determine whether the lands in question were known to be mineral in character at and prior to the date of the approval of the official township survey. That question was determined against the State. And in the absence of fraud or imposition, such departmental determination is conclusive here. Cameron v. United States, 252 U.S. 450; West v. Standard Oil Co., supra.

The official survey of the lands in controversy not having been approved at the time Utah became a state, and such lands being known at and prior to the date on which the survey was approved to be valuable for the minerals they contained, title did not pass under the grant contained in the Enabling Act. It passed under the mineral patents. Heydenfeldt v. Daney Gold and Silver Mining Co., supra; Mining Co. v. Consolidated Mining Co., supra; United States v. Morrison, supra; United States v. Sweet, supra;

United States v. Wyoming, supra. Accordingly, the judgments are severally AFFIRMED.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	1
STATUTES INVOLVED	2
STATEMENT	2
ARGUMENT	4
I. THE DECISIONS BELOW ARE CLEARLY CORRECT	4
(a) The School Land Grants to the Western Mineral Bearing States as to Lands Unsurveyed at the Date of Statehood Take Effect Upon Final Approval of Survey. If at Such Time, Lands Within Numbered School Sections are Known to be Mineral in Character, They Do Not Pass to the State but Remain the Property of the United States for Disposition Under the Mining Laws	4
(b) Congress Has Constituted the Land Department, Under the Supervision and Control of the Secretary of the Interior, a Special Tribunal with Judicial Functions. Where, as in the Administration of the Mining Laws, the Secretary is Required, Upon Application of a Claimant, to Issue a Mineral Patent, His Determination of the Mineral Character of Land in the Absence of Fraud or Imposition is Binding upon the Courts	5
II. THERE IS NO CONFLICT OF DECISION	6
III. THERE IS NO PRESENTLY IMPORTANT QUESTION OF FEDERAL LAW	9
CONCLUSION	11

TABLE OF CONTENTS—Continued

CITATIONS

CASES:	Page
Cameron v. United States, 252 U. S. 450 (1920)	6
Heydenfeldt v. Daney Gold and Silver Mining Company, 93 U. S. 634 (1876)	4
Michigan Land and Lumber Co. v. Rust, 168 U. S. 589 (1897)	6
Mining Co. v. Consolidated Mining Co., 102 U. S. 167 (1880)	4
Mullan v. United States, 118 U. S. 271 (1886)	4, 5
Riverside Oil Co. v. Hitchcock, 190 U. S. 316 (1903)	6
Smelting Co. v. Kemp, 104 U. S. 636 (1881)	7
Standard Oil Co. of California v. United States, 107 F. 2d 402 (9th Cir. 1939)	6
State of Utah v. Work, 6 F. 2d 675, 676 (D. C. Cir. 1925, affirmed 273 U. S. 649)	5
Steel v. Smelting Company, 106 U. S. 447 (1882)	7
Sweet v. United States, 228 F. 421 (8th Cir. 1915)	8
United States v. Morrison, 240 U. S. 192 (1916)	5
United States v. Sweet, 245 U. S. 563 (1918)	5, 8, 10
United States v. Wyoming, 331 U. S. 440 (1947)	6
West v. Standard Oil Co., 278 U. S. 200, 208 (1929)	5, 6
Work v. Louisiana, 269 U. S. 250, 257-258 (1925)	5
Wright v. Roseberry, 121 U. S. 488 (1887)	7
Wyoming v. United States, 255 U. S. 489, 500-501 (1921)	5

STATUTES:

Act of May 10, 1872, 17 Stat. 91, 30 U. S. C. 22-24, 26-30, 33-35, 37 and 39-42	2, 4

TABLE OF CONTENTS—Continued

STATUTES—Continued: Page

Act of February 28, 1891, 26 Stat. 796, 43 U. S. C. 851 ..... 2, 4, 5, 8

Act of July 16, 1894, 28 Stat. 107, Sections 6, 10 ..... 2, 3, 4, 8

Act of May 3, 1902, 32 Stat. 189, 43 U. S. C. 853 ..... 2, 4, 5, 8

Act of January 25, 1927, 44 Stat. 1026, 43 U. S. C. 870 ..... 2, 9, 10

Act of April 22, 1954, 68 Stat. 57, 43 U. S. C. 870 (d) 2, 9, 10

Mineral Lands Leasing Act, February 25, 1920, Ch. 85, 41 Stat. 437 9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 263

STATE OF UTAH; JOHN ARCHER; W. H. H. CRANMER; and J. R. SIMPLOT COMPANY, a corporation,

Petitioners,

vs.

BRADLEY ESTATES, INC., a corporation; and WALTER N. STILLMAN; CHARLES A. RHEALT; and ROBERT I. HUNNEMAN, Trustees under the will of ROBERT S. BRADLEY, deceased.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether four United States mineral patents, issued to the predecessors of respondents, are valid insofar as they affect portions of two sections of land designated in the grant for the support of common schools of the State of Utah.

STATUTES INVOLVED

The statutory provisions involved are Sections 6 and 10 of the Act of July 16, 1894, 28 Stat. 107; the Act of February 28, 1891, 26 Stat. 796, 43 U. S. C. 851; the Act of May 3, 1902, 32 Stat. 189, 43 U. S. C. 853; the Act of May 10, 1872, 17 Stat. 91, 30 U. S. C. 22-24, 26-30, 33-35, 37 and 39-42. Contrary to the statement of petitioners, the Act of January 25, 1927, 44 Stat. 1026, 43 U. S. C. 870, and the Act of April 22, 1954, 68 Stat. 57, 43 U. S. C. 870 (d), are not involved.

STATEMENT

No issue of fact is involved. However, amplification of the statement of petitioners is necessary to an understanding of the question presented. Survey of the school sections in question, being Section 32, Township 12 North, Range 8 East, and Section 36, Township 11 North, Range 7 East, Salt Lake Meridian, had not been made at the time of the admission into the Union of the State of Utah. After statehood, township survey covering said sections was made and finally approved. Subsequent to final approval of survey, applications for mineral patents, based upon the location of claims made under the mining laws as embodied in said Act of May 10, 1872, were filed by the predecessors of respondents in the United States Land Office in Salt Lake City. These applications were made in four proceedings. The first application covering fourteen claims was filed in 1907 and the other three applications covering nine claims were filed in 1912. Inasmuch as the applications covered in part lands within the sections designated in the grant to the State of Utah for the support of its common schools, notice in accordance with Land Department regulations and procedure was

given to the State of Utah. The State appeared in each of the four proceedings and filed written protests against the granting of the requested mineral patents, contending that the school sections affected were granted to the State of Utah under the provisions of the Utah Enabling Act; that mineral lands were in no wise excepted, reserved or withheld from the grant of said Act; that the respective school sections became vested in and passed to the State absolutely and without reserve; and that the lands were not at the time of the admission of the State into the Union and at the time of the passage of the Enabling Act, or at the time of final approval of survey, known to be mineral or valuable for minerals. The State participated throughout. The proceedings extended over a period of more than seven years. By final action taken within the Land Department, it was found and determined that at and prior to the date of the final approval of the official survey, the lands were known to be valuable for the phosphate minerals they contained, and the other contentions of the State were denied. Upon the basis of such final determinations, the mineral patents in question were issued, the first in 1908, and the last three in 1915.

Ever since patent, taxes against respondents and their predecessors, as owners of these lands, have been imposed and are now being imposed by the State of Utah. After patent, no claim of ownership was made by the State until 1952, when it issued a lease to petitioner Archer. Petitioners Cranmer and Simplot claim under him. The assertions by Archer of right to possession necessitated the action to quiet title by respondents. Decree quieting respondents' title was entered by the District Court for the District of Utah, and on appeal, affirmed by the Court of Appeals, Tenth Circuit.

ARGUMENT

I.

THE DECISIONS BELOW ARE CLEARLY CORRECT.

The validity of the patents in question is controlled by the law in force at the time of their issuance.

Two subjects of federal legislation are involved, one dealing with the mining laws as embodied in the Act of May 10, 1872, and the other dealing with the Congressional grant to the State of Utah for the support of its common schools. The Utah grant, in its initial form, is embodied in the Act of July 16, 1894, pursuant to which Utah was admitted into the Union. This Act has been modified so far as material here by the School Land Indemnity Law of February 28, 1891, which was made particularly applicable to the State of Utah by the Act of May 3, 1902.

In the construction and administration of these bodies of law, under decisions of the United States Courts, two fundamental principles have become established:

> **(a) The School Land Grants to the Western Mineral Bearing States as to Lands Unsurveyed at the Date of Statehood Take Effect Upon Final Approval of Survey. If at Such Time, Lands Within Numbered School Sections are Known to be Mineral in Character, They Do Not Pass to the State but Remain the Property of the United States for Disposition Under the Mining Laws.**

See: *Heydenfeldt* v. *Daney Gold and Silver Mining Company*, 93 U. S. 634 (1876); *Mining Co.* v. *Consolidated Mining Co.*, 102 U. S. 167 (1880); *Mullan* v. *United States*,

118 U. S. 271 (1886); *United States* v. *Morrison*, 240 U. S. 192 (1916).

For many years after the admission of Utah into the Union, the State contended that the principle stated above did not apply to the grant for the support of her common schools. This controversy was laid at rest in *United States* v. *Sweet*, 245 U. S. 563 (1918), where this Court said that the school grant to Utah must be read in the light of the mining laws, the School Land Indemnity Law (Acts of February 28, 1891 and May 3, 1902), and the settled public policy respecting mineral lands, and held that where numbered school sections are mineral—known to be so when the grant takes effect—they do not pass under the Utah grant, but remain subject to disposition under the mining laws which are not curtailed. Thus the principle stated above was made applicable to the State of Utah and she was placed upon an equal footing with the other Western mineral bearing States in the administration of the school land grants.

Such has been the uniform construction of the holding in *United States* v. *Sweet, supra.* See: *Wyoming* v. *United States*, 255 U. S. 489, 500-501 (1921); *Work* v. *Louisiana*, 269 U. S. 250, 257-258 (1925); *West* v. *Standard Oil Co.*, 278 U. S. 200, 208 (1929); *State of Utah* v. *Work*, 6 F. 2d 675, 676 (D. C. Cir. 1925, affirmed 273 U. S. 649).

(b) Congress Has Constituted the Land Department, Under the Supervision and Control of the Secretary of the Interior, a Special Tribunal with Judicial Functions. Where, as in the Administration of the Mining Laws, the Secretary is Required, Upon Application of a Claimant, to Issue a Mineral Patent, His Determination of the Mineral Character of Land in the Absence of Fraud or Imposition is Binding upon the Courts.

See: *Michigan Land and Lumber Co.* v. *Rust*, 168 U. S. 589 (1897); *Riverside Oil Co.* v. *Hitchcock*, 190 U. S. 316 (1903); *Cameron* v. *United States*, 252 U. S. 450 (1920); *West* v. *Standard Oil Co., supra; Standard Oil Co. of California* v. *United States*, 107 F. 2d 402 (9th Cir. 1939).

The principles stated above have become fixed and established by a consistent course of judicial determination extending back for almost three quarters of a century. They were correctly applied by the Land Department in the long drawn out proceedings before it, which culminated in the issuance of the mineral patents in question, by the trial court in the entry of its judgment quieting the title of respondents, and by the Court of Appeals, Tenth Circuit, in affirming that judgment. They control this suit. Under the application of these principles no other result could have been reached here.

II.

THERE IS NO CONFLICT OF DECISION.

No decisions in conflict with the above-stated principles have been found and we are sure that none exists.

United States v. *Wyoming*, 331 U. S. 440 (1947), cited by petitioners, is not contra. An examination of the opinion in that case will disclose that the question presented was whether Wyoming, under its Enabling Act, was granted such an interest in unsurveyed school lands as to prevent the Federal Government, prior to survey, from placing such lands in a petroleum reserve. No question of the mineral character of the land at the date of approval of survey or of the issuance of a patent to a claimant under the mining laws

was involved. The observations which are made by the Court respecting the history of the school land grants relate to the rights which may be acquired by settlers and homesteaders of nonmineral lands under the homestead and pre-emption laws. These considerations deal with the nonmineral lands granted to the States for the support of their common schools. They have no application to mineral lands which were excluded from such grants and are controlled by the mining laws.

Wright v. *Roseberry*, 121 U. S. 488 (1887), is not in conflict with the second principle stated above. It deals with a swamp land grant. The Land Department had never taken jurisdiction to make a factual determination of the character of the land and the question was whether, in the absence of such a determination, any other method of proof was open to prevent a failure of rights. Such a situation has no application here, for the Land Department, at the very inception of the patent proceedings, took jurisdiction over the question of the character of the land.

The rule announced in *Steel* v. *Smelting Company*, 106 U. S. 447 (1882), has no application here. The factual determination made within the Land Department as to the mineral character of the lands in question excluded the same from the grant to the State of Utah. They remained the property of the United States, subject to disposition under the mining laws. The situation here is more like that found in *Smelting Co.* v. *Kemp*, 104 U. S. 636 (1881), where it is held that a patent executed in the form and by the proper officers for such a portion of the public domain as is by law subject to sale or other disposal, passes the title thereto and the findings of the facts by the Land Department, which authorize its issue are conclusive in a court of law.

The contentions made by the State here, namely, that under the provisions of Section 10 of the Utah Enabling Act, lands granted to the State for the support of the common schools, whether surveyed or unsurveyed, vested absolutely at the date of statehood, were urged by the State before the Court of Appeals, Eighth Circuit in the *Sweet* case, *supra*, and are reflected in the opinion sustaining the contentions of the State in that Court. See: *Sweet* v. *United States*, 228 F. 421 (8th Cir. 1915). They were urged upon this Court and fully considered by it in the opinion in *United States* v. *Sweet*, *supra*. Those contentions were determined adversely to the State and laid at rest in that decision.

The conclusive answer to the contentions of the State is found in the very language of said Section 10. The subject of the Section is the "lands herein granted". These, under *United States* v. *Sweet*, *supra*, are nonmineral lands. The provisions relating to surveyed and unsurveyed lands, accordingly, have to do with nonmineral lands passing under the grant. As made clear by this Court in *United States* v. *Sweet*, *supra*, the School Land Indemnity Law of February 28, 1891, made provisions for compensating the States for nonmineral school sections taken by pre-emption or homestead settlers as well as for sections mineral in character; and these provisions were made particularly applicable to the State of Utah by the Act of May 3, 1902. In order that there should be no doubt about the matter, the latter Act contains a concluding provision that the grant to Utah shall be administered in accordance with the provisions of said Act of February 28, 1891, "anything in the Act providing for the admission of said State into the Union, to the contrary notwithstanding."

III.

THERE IS NO PRESENTLY IMPORTANT QUESTION OF FEDERAL LAW.

The principles stated above control the present suit. These principles are now largely of historical interest. Since the rights involved here became vested, fundamental changes have been made in both the mining laws and the school land grants to the mineral bearing States.

Probably the most important change in the mining laws came in the Mineral Lands Leasing Act of February 25, 1920, Ch. 85, 41 Stat. 437. Under this Act, the acquisition of phosphate, oil, gas and certain other minerals was withdrawn from the general mining laws and placed on a lease basis. Mining claims such as those covered by the patents involved, being located for phosphate, can no longer be initiated. It is unlikely that rights similarly acquired will again be drawn into question.

In the school land grants, fundamental changes have been made by said Acts of January 25, 1927, and April 22, 1954. Under the former Act, subject to the exceptions and conditions therein set forth, numbered school sections, though mineral in character, are granted to the States. Under the latter Act, numbered mineral school sections then surveyed and covered with leases issued by the United States prior to survey, are granted to the several States subject to such leases, they being substituted for the United States as lessor, and as to numbered mineral school sections thereafter surveyed, they likewise pass to the States upon survey, subject to leases issued by the United States prior to survey, with like substitution as lessor.

Petitioners appear to rely upon the Acts of January 25, 1927, and April 22, 1954, in support of their contention that an important question of Federal law is presented in the case at bar. They assert that *United States* v. *Sweet, supra,* was in effect repealed by the Act of January 25, 1927, and thus seek to avoid the controlling effect of that decision. We readily concede that the Act of January 25, 1927, had a far-reaching effect in the school land grants. However, that Act clearly had no effect upon the rights involved in the present suit. The grant of mineral school sections thereunder was made expressly subject to existing rights. Obviously, the Act could not operate as a grant by the United States to the lands in question here for the United States had, long prior to the passage of the Act, parted with its title and vested the same in the predecessors of respondents. Likewise, it is clear that the Act of April 22, 1954, dealing as it does with leases on unsurveyed lands granted by the United States prior to the date of its passage and leases thereafter granted on unsurveyed lands, can have no bearing upon the case at bar.

Reference is made by petitioners to uranium claims located upon the public domain within the State of Utah. The mention of uranium in this atomic age excites the imagination. The administration and construction of the several Acts which have modified the mining laws and the school land grants, passed in the last thirty-five years, may very well present important questions of federal law. Some of these questions may involve the acquisition of rights in lands valuable for uranium. No such statute or right arising thereunder is involved here. This suit turns in a narrow compass. It is essentially a matter of private litigation involving small parcels of land covering minerals no longer subject to loca-

tion under the mining laws. The principles controlling the result here have long been fixed and determined. No occasion now exists for their reconsideration.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

DENNIS McCARTHY,
S. N. CORNWALL,
Walker Bank Building,
Salt Lake City, Utah,
Counsel for Respondents.

August 12, 1955.